

REMARKS

Claims 1-17 remain in the application. The Examiner has renumbered claims 5-18 as claims 4-17.

The Office Action maintains its rejection of claims 1-15 under 35 U.S.C. § 102(e) as being anticipated by US 6203105 to Dick Rhodes (the Rhodes patent).

As recited in claim 1, the invention is a vehicle occupant support apparatus for installation in a vehicle seat. The apparatus comprises a plurality of air cells that include expandable chambers, and also comprises a control module. The control module is configured to connect to and operate only a limited number of air cells selected from the plurality of air cells leaving at least one air cell of the plurality of air cells disconnected from the control module. The control module has an input connectable to a fluid supply system, and includes a limited number of outputs corresponding to the limited number of air cells. The limited number of outputs connects respective ones of the limited number of air cells to the fluid supply system via the control module. This allows the plurality of air cells to be conformed to any one of a number of different vehicle types. This is done by connecting to the limited number of outputs only those cells selected from the plurality of air cells as being appropriate or intended for use in a given vehicle type and leaving the remainder of the cells disconnected.

Claim one describes “a control module configured to connect to and operate only a limited number of air cells *selected from a plurality of air cells.*” The present Office Action maintains that the Rhodes patent discloses this “although other ‘cells in the group’ may be inflated from the direct connection of the one air cell.” In response to this argument the Applicant acknowledges that Rhodes discloses a control module *directly* connected to one air cell and *indirectly* connected to other air cells through that one air cell.

But claim 1 isn't limited to a direct connection. It simply recites the term "connect." Accordingly, while the Rhodes control module may be said to *connect directly* to only a limited number of selected cells, it, in fact, *connects* to all of the cells in the Rhodes system. In addition, the Rhodes system doesn't meet the claim 1 description of a control module configured to *operate* only a limited number of air cells. The Rhodes system operates all the cells in the Rhodes systems and neither discloses nor suggests any arrangement for operating only the directly-connected cells of the Rhodes system. In other words, the Rhodes control module, as disclosed, is not capable of connecting and controlling only the directly-connected or "selected" air cells in the Rhodes system to the exclusion of the indirectly-connected cells. When the directly-connected cells are inflated the indirectly-connected cells are necessarily inflated as well.

Claim 1 also describes a plurality of air cells that may be conformed to any one of a number of different vehicle types *by connecting to the limited number of outputs* [of the control module] *only those cells selected from the plurality of air cells as being appropriate or intended for use in a given vehicle type*. Again, the Rhodes system doesn't meet this limitation because once the "selected" Rhodes air cells are directly connected to the control module outputs, all of the Rhodes air cells, including the indirectly-connected air cells, are connected and operational.

To even more clearly define over the Rhodes patent, the Applicant has amended claim 1 to emphasize that the remainder of the cells are left disconnected.

For these reasons, the applicant maintains that the Rhodes patent anticipates neither claim 1 nor dependent claims 2-15.

The Office Action again rejects claims 16 and 17 under 35 U.S.C. § 103(a) as being unpatentable over the Rhodes patent for the same identical reasons as set forth in the two previous Office Actions: because the method steps described in those claims "would

inherently be incorporated within the use of the invention.” In response to the first of these two previous Office Action the applicant argued the following:

With this statement it appears that the Action is arguing that it’s inherent in the seating system design disclosed in the Rhodes patent that certain air cells (that are not to be used in a given application) be deactivated by disconnecting them. In response, the applicant maintains that inherency requires that the missing descriptive matter is *necessarily present* in the thing described in the reference, and that persons of ordinary skill would so recognize it. *Continental Can Co., U.S.A. v. Monsanto Co.*, 948 F.2d 1264, 1268-69 20 U.S.P.Q.2d 1746, 1749-50 (Fed.Cir.1991). Inherency may not be established by probabilities or possibilities. *Id.* The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient. *Id.* In other words, to be inherent, a claimed process or method step must have no alternative – the step must *necessarily* be followed when the invention is practiced. That is not the case here. There are any number of ways that individual cells could be deactivated, e.g., by closing valves, by puncturing the cells, or by fixing an exhaust valve permanently in an open position to prevent the accumulation of air. Also, as a preliminary matter, there’s nothing in the Rhodes patent that either discloses or suggests that certain air cells might be deactivated, disconnected, or, in some fashion, cut-off to suit different applications. The Office Action has provided no evidence that the Rhodes system must (rather than might) include the steps of deactivating certain cells by either disconnecting the cells to be deactivated or connecting only the cells that are not to be deactivated as recited in claims 17 and 18. Instead, what the Rhodes patent actually discloses is temporary deactivation of cells by selectively operating valves. For these reasons the applicant maintains that claims 17 and 18 are patentable over the Rhodes patent.

The Applicant is again unable to locate in the present Office Action any response to the Applicant’s arguments above. Therefore, the Applicant asks, once again, that the examiner address these arguments and provide the applicant an opportunity to respond. In any event, the Applicant maintains that the rejection based on inherency is improper and that claims 17 and 18 are patentable over the Rhodes patent.

Claims 1-17 recite patentable subject matter and are allowable. Therefore, the applicant respectfully submits that the application is now in condition for allowance

and respectfully solicits such allowance. Please favorably reconsider the outstanding Office Action.

I authorize the Assistant Commissioner to charge any deficiencies, or credit any overpayment associated with this communication to Deposit Account No. 50-0852. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

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